



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/097,023	06/12/1998	JILL MCFADDEN	290252021800	2472

28075 7590 07/26/2005

CROMPTON, SEAGER & TUFTE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

EXAMINER

HAYES, MICHAEL J

ART UNIT	PAPER NUMBER
----------	--------------

3763

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/097,023
Filing Date: June 12, 1998
Appellant(s): MCFADDEN ET AL.

MAILED
JUL 26 2005
Group 3700

David M. Crompton
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/16/2005.

Art Unit: 3763

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-15, 17-22, 24-42, 44-48, 50, 53-56, 58, 59, and 61-63 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 3763

(9) Prior Art of Record

JP05-220225	SUZUKI	8-1993
5,772,681	LEONI	6-1998
4,637,396	COOK	1-1987
5,257,974	COX	11-1993
5,674,276	ANDERSEN et al.	10-1997
4,898,591	JANG et al.	2-1990
5,702,373	SAMSON	12-1997

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 13, 19, 20, 24, 31, 40, 46, 47, 50, 53, 54, 55, 56, 58, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by JP05-220225 (Suzuki) in view of English description of JP patent as provided by SAMSON. This rejection is set forth in the final rejection, mailed on 11/16/2004. Appendices B and C include machine translations of JP 05-220225.

Claims 1-5, 13, 14, 18, 19, 20, 24-27, 31-33, 40, 41, 45, 46, 47, 50, 53-56, 58, and 59 are rejected under 35 U.S.C. 102(e) as being anticipated by Leoni. This rejection is set forth in the final rejection, mailed on 11/16/2004. .

Claims 1, 8-10, 13, 15, 18-21, 31, 36-38, 40, 42, 45-48, 50, 53-56, 58, 59, 61, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Cox. This rejection is set forth in the final rejection, mailed on 11/16/2004.

Art Unit: 3763

Claims 2-7, 11, 12, 14, 24-30, 32-35, 39, 41, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Cox and further in view of Leoni. This rejection is set forth in the final rejection, mailed on 11/16/2004.

Claims 6-12, 15, 21, 28-30, 34-39, 42, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP05-220225 or LEONI and further in view of ANDERSEN et al.. This rejection is set forth in the final rejection, mailed on 11/16/2004.

Claims 17, 22, 44, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP05-220225 or Leoni in view of Jang. This rejection is set forth in the final rejection, mailed on 11/16/2004.

Claims 17, 22, 44, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook, Cox, and Jang. This rejection is set forth in the final rejection, mailed on 11/16/2004.

(11) Response to Argument

102(b) Rejection in view of JP 05-220225

Applicants argue that reliance on the JP 05-220225 translation is improper because it is a machine translation and shows a disparity in teachings. Applicants do not particularly point out these disparities, but the Examiner considers the translations of JP 05-220225 to be accurate and precise. The machine translation given as Appendix B was provided by the USPTO and the machine translation given as Appendix C was provided by Applicants.

Applicants argue that the JP 05-220225 patent disclosure of “knitted” actually means “woven or braided.” This interpretation of the JP 05-220225 patent has no reasonable basis. Applicants’ argument that they see a woven or braided member in the figures is not convincing because the level of detail Applicants profess to see in the figures is unreasonable. The figures

Art Unit: 3763

only show a vague sketch. The figures do not show any detail to determine a woven, braided, or knitted member. Instead of forcing a particular view through the figures, the examiner relies on the plain language of the patent that it describes a knitted member 35, e.g., see paragraphs 0011, 0014, 0023, and claim 1 of patent translations labeled Appendix B and Appendix C.

Applicants argue that JP 05-220225 does not describe interlocking up and down loops that is generally not radially expandable. The examiner takes the position that “knitted” inherently means interlocking up and down loops. It appears that Applicants also took this view during prosecution. Applicants stated on the record on pg. 2, 4th paragraph, in remarks received 7/12/2001 that “. . . in a knit, individually formed loops are connected together (see Specification, p. 8, lines 8-9 & Fig. 4” Here, Applicants recognized that a knit is described by what is shown in their specification and in Fig. 4. Additionally, Applicants recognized the meaning of knit to be interlocking loops on pg. 3, second full paragraph, in remarks submitted 2/12/2002. In this paragraph Applicants stated:

The inpropriety of equating woven and knit tubular members is further borne out in the differences in the definition provided in Webster's Ninth New Collegiate Dictionary. Woven is merely defined as interlacing strands, while knit is defined as interlacing in a series of connected loops with needles. The Examiner seems to recognize that there is a difference in the definitions when discussing his response to Applicants' prior arguments. The Examiner asserts that there are multiple definitions given to the word "knit". However, we are presently dealing with only one definition which Applicants accept from the Webster's Ninth New Collegiate Dictionary.

Clearly prosecution was undertaken with both Applicants and Examiner having the common view that a knit was interlocking up and down loops.

Applicants argue that the knitted member disclosed in JP 05-220225 is not “generally not radially expandable.” The Examiner takes the position that the prior art shows a knitted member generally not radially expandable because there is resistant to expansion due to the interlocking

Art Unit: 3763

loops. JP 05-220225 describes a densely knitted member that has great torsional rigidity (See translations claim 1 and paragraphs 0003). This structural arrangement would inherently result in being generally not radially expandable. During prosecution the Examiner had requested Applicant to more particularly point out the meaning of “generally not radially expandable” as the example given in Applicants’ specification at pg. 8, ll. 17-20, but Applicant chose to not do so, instead relying on a broader interpretation of the claim language.

Applicants rely on the machine translation provided by the Japanese Patent Office (Appendix C) as providing evidence that “knitted” does not mean knitted in JP 05-220225. Applicants state that paragraphs 0019 and 0023 describe two layers that are formed “by turns.” Applicants take this to mean that the layers are woven or braided. Here, Applicants have forced the wording of the patent to fit an unreasonable interpretation. To better understand what is meant by “being formed by turns” the machine translation provided by the USPTO (Appendix B) can be consulted. Here this translation reads “are formed alternately.” Clearly “by turns” and “alternately” mean the same thing and refer to forming in sequence.

102(e) Rejection in view of Leoni

Applicants argue that Leoni does not disclose the claimed invention because the knitted member disclosed has contact points moveable with respect to each other at crossover points. The examiner notes that Applicants have not recited a limitation that there is no movement at crossover points in the claimed knitted structure.

Applicants state that Leoni does not show a knit member generally not radially expandable. The examiner disagrees and refers to claim 9 where Leoni establishes the middle

Art Unit: 3763

section to have an expandable section (i.e., the expandable part of the balloon) and a non-expandable section. The non-expandable section meets the claim limitation of generally not radially expandable. Furthermore Leoni discloses a knitted member to resist internal pressure at col. 2, ll. 58-61.

Applicants argue that knitted does not inherently mean interlocking up and down loops. The examiner maintains that interlocking up and down loops is the structure of a knitted item and is the structure that describes an item as knitted. This interpretation is plainly seen in the dictionary definition of “knit.” (See Appeal Brief pg. 18, first full paragraph).

103(a) Rejection in View of Cook and Cox

Applicants argue that Cook and Cox are non-analogous art because their claimed invention provides kink resistance and flexibility. The examiner points out that Cook and Cox are both concerned with reinforcing structure for catheter devices, such as Applicants’ claimed invention and are analogous art. See final rejection mailed 11/16/2004, pg 8, first three full paragraphs.

Applicants argue that there is no motivation to combine Cook and Cox. The examiner again refers to the final rejection mailed 11/16/2004, pg. 3, second full paragraph for discussion of the motivation to limit the expansion of a knitted member as taught by Cox.

Applicants argue that Cook teaches away from Cox and that the modification of Cook with the teachings of Cox would destroy the reference. The examiner points out that Cook discloses the claimed invention except for a particular limit on expansion. Cox teaches this

Art Unit: 3763

limitation for expansion, and modifying the device disclosed by Cook would give the device greater use, as discussed in the final rejection, mailed 11/16/2004 at pg. 3, second full paragraph.

103(a) Rejection in View of Cook, Cox, and Leoni

Applicants again argue that the references do not show up and down loops, that there is no motivation to combine the references, and that the references teach away from each other. Applicants have not specifically pointed out any additional evidence to support these arguments, instead relying on previous arguments and general conclusive statements. The examiner refers to the discussion above with regards to up and down loops of a knit and to the rejections and comments in the final rejection mailed 11/16/2004 at pgs. 3-4 and comments at pgs. 6-8.

103(a) Rejection in View of Leoni or JP 05-200022 and Andersen

Applicants argue that there is no motivation to combine Andersen with the disclosed catheter of Leoni or JP 05-220225 because Andersen is non-analogous art and no common problem is addressed. The examiner disagrees because all the references are concerned with supplying reinforcing structure to medical tubular structures for use within a patient. The examiner refers to the rejections in the final rejection mailed 11/16/2004 at pgs. 4-5 for discussion concerning motivation to combine the references.

103(a) Rejection in View of JP or Leoni and Jang

Applicants argue that Jang does not supply the missing limitations from JP 05-220225 and Leoni. The examiner maintains that JP 05-220225 and Leoni disclose all claimed limitations

Art Unit: 3763

except polyethylene as an inner and outer cover, which is taught by Jang. The claimed knitted structural limitations are disclosed by JP 05-220225 and Leoni as discussed above.

103(a) Rejection in View of Cook, Cox, and Jang

Applicants argue that Cook does not teach a knit tubular member as claimed, there is no motivation to combine Cook and Cox, the references teach away from each other, and modifying the references would destroy the function of the devices disclosed in the references. Applicants have not provided any additional specific evidence to support these arguments, instead relying on previous arguments and general conclusive statements. The examiner refers to the discussion above and the rejections and comments in the final rejection mailed 11/16/2004 at pg. 5, second full paragraph and comments on pgs. 6-8 to support the maintained rejections. For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Michael J Hayes
Primary Examiner
Art Unit 3763

mjh
July 21, 2005

Conferees:
Nicholas Lucchesi
LoAn Thanh

CROMPTON, SEAGER & TUFTE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700


LOAN H. THANH
PRIMARY EXAMINER